

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CLAUDIA MACIAS, FERNANDO DIAZ, and
ALANI DIAZ, by next friend Claudia Macias,

Plaintiffs,

v.

ORDER

18-cv-358-wmc

MT. OLYMPUS RESORTS, INC.,

Defendant.

Plaintiff Claudia Macias, Fernando Dias and Alani Diaz assert negligence and private nuisance claims against defendant Mt. Olympus Resorts, Inc., based on alleged bedbug bites each plaintiff sustained during a stay at defendant's resort in the Wisconsin Dells. (Compl. (dkt. #1).) In their complaint, plaintiffs each seek damages in excess of \$75,000 each in actual and punitive damages. (*Id.* at p.6.) Defendant answered the complaint, but then moved to dismiss the complaint for lack of subject matter jurisdiction. (Dkt. #14.)

While the motion to dismiss was pending, defendant filed a motion to withdraw its motion to dismiss. (Mot. to Withdraw (dkt. #26).) Defendant explains in its motion to withdraw, that "given how far the parties have come with development of the case, we would rather see the investment of time and effort through to conclusion rather than starting over again in state court." (*Id.*) Fair enough, but this court has an independent obligation to ensure that it has subject matter jurisdiction. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). Having raised a challenge, defendant simply cannot withdraw it.

Even so, the court concludes that it is not clear beyond a "legal certainty that the

claim is really for less than the jurisdiction amount” in light of the parties’ submissions and the Seventh Circuit decisions considering punitive damages in similar cases. *Del Vecchio v. Conseco, Inc.*, 230 F.3d 974, 978 (7th Cir. 2000) (internal citation and quotation marks omitted). In making this determination, the court primarily relies on *Mathias v. Accor Economy Lodging, Inc.*, 347 F.3d 672 (7th Cir. 2003), in which the Seventh Circuit affirmed a total damages award of \$191,000 (consisting of \$5,000 in actual damages and \$186,000 in punitive damages) to each of two plaintiffs, based on bug bite allegations similar to those at issue here. *Id.* at 678.¹

Accordingly, IT IS ORDERED that:

- 1) Defendant Mt. Olympus Resorts, LLC’s motion to dismiss (dkt. #14) is DENIED.
- 2) Plaintiffs’ motion to supplement (dkt. #24) is DENIED as moot.
- 3) Defendant’s motion to withdraw (dkt. #26) is DENIED as moot.

Entered this 18th day of March, 2019.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge

¹ Nothing about this order affects plaintiffs’ obligation to file an amended complaint containing sufficient allegations to establish the citizenship of defendant. (*See* 3/11/19 Order (dkt. #25).)